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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,973	06/10/2004	Andrew Scott Argersinger	GEMS 0242 PUS	3972

27256 7590 11/17/2006

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EXAMINER
RAMIREZ, JOHN FERNANDO

ART UNIT	PAPER NUMBER
3737	

DATE MAILED: 11/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/709,973	ARGERSINGER ET AL.	
	Examiner	Art Unit	
	John F. Ramirez	3737	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 August 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) *5,6,14 and 15* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-4,7-13, and 16-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

After a review of applicant's remarks, all necessary changes to the claims have been entered. Accordingly, claims 5, 6, 14, and 15 have been cancelled.

Applicant's arguments filed August 17,2006 have been fully considered but they are not persuasive. In relation to claims 1, 11, and 18, it is noted for the record that a recitation with respect to the manner in which an apparatus is intended to be employed does not impose any structural limitation upon the claimed apparatus which differentiates it from a prior art reference disclosing the structural limitations of the claims. In re Pearson, 494 F. 2d 1399, 181 USPQ 641 (CCPA 1974); In re Casey, 370 F. 2d 576, 152 USPQ 235 (CCPA 1967). Accordingly, since claim 16 is an apparatus claim, and not a method claim, the intended uses disclosed by the applicant do not provide the necessary patentable weight to overcome the pending rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 11, and 18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to

one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The word "surrounding" is considered to be new matter.

Claims 1, 11, and 18 are rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. The phrase "a non-radiolucent cover surrounding said imaging detector bucky" is critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). The word "surrounding" is not enabled by the disclosure.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-4, 8, 11-13, and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klawitter et al. (US 5,081,657) in view of Wyatt et al. (US 6,967,309).

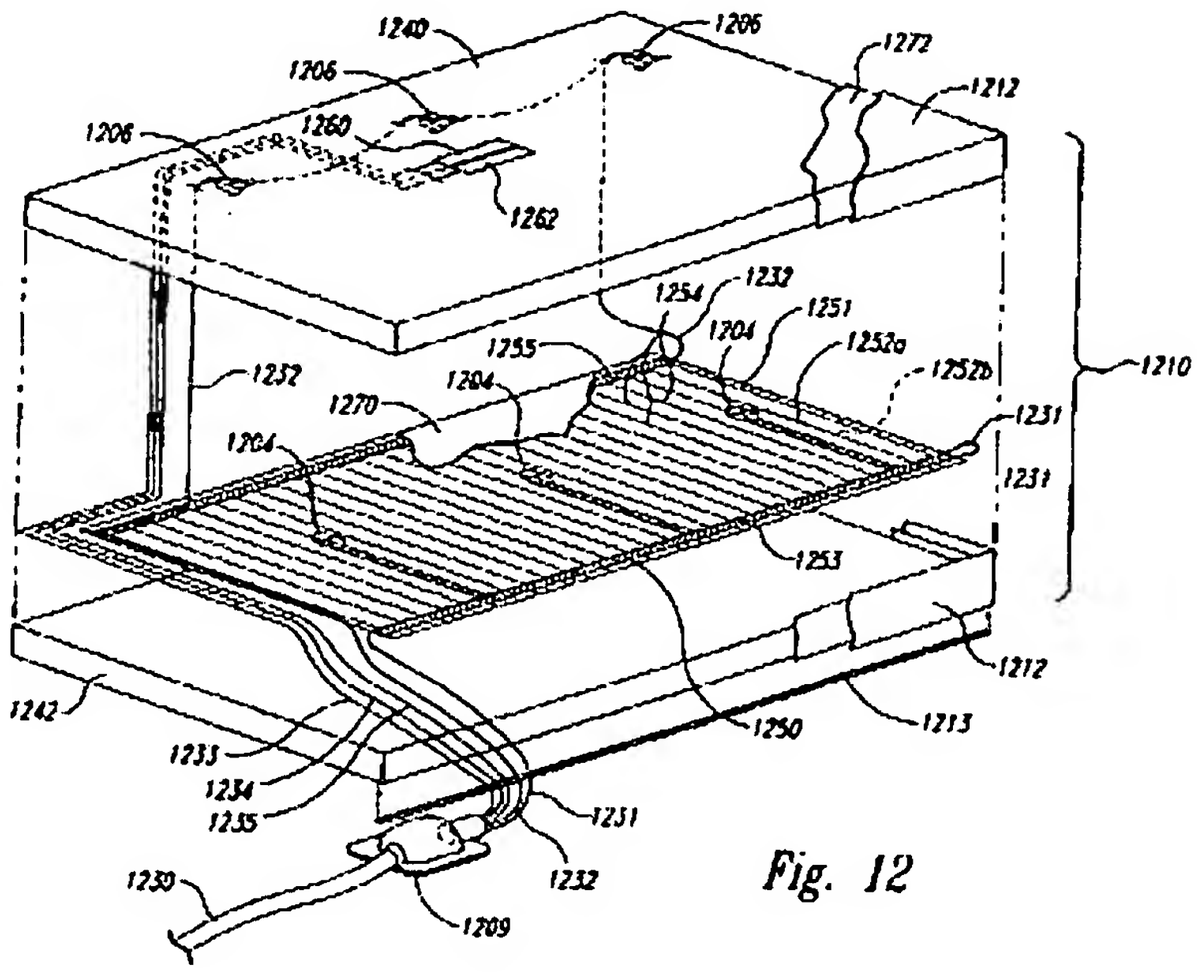

Fig. 12

The Klawitter et al. patent shows in figures 1 and 2, all the limitations of the claimed subject matter except for mentioning specifically that there is a thermo sensor assembly positioned to monitor temperature at the patient exposure surface, a logic that is in communication with the thermo sensor assembly and the thermo generating element, and said logic adapted to remove power from the thermo generating element.

However, a thermo sensor assembly positioned outside the imaging region to monitor temperature at the patient exposure surface, a logic that is in communication with the thermo sensor assembly and the thermo generating element, and said logic adapted to remove power from the thermo generating element is considered conventional in the art as evidenced by the teachings of Wyatt et al.

The Wyatt et al. patent teaches, a thermo sensor assembly positioned to monitor temperature at the patient exposure surface, a logic (fig. 1,120) that is in communication

with the thermo sensor (fig. 12,1260, 1262) assembly and the thermo generating element (fig. 12, 1250), and said logic (fig. 1, 120) adapted to remove power from the thermo generating element (col. 18, lines 27-46).

Based on the above observations, for a person of ordinary skill in the art, modifying the method disclosed by Klawitter et al., with the above discussed enhancements would have been considered obvious because such modifications would have enhanced to control the temperature of the heating pad at the patient exposure surface when it exceeds the temperature selected by the operator.

Claims 9, 10, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Klawitter et al. in view of Wyatt et al. (US 6,967,309).

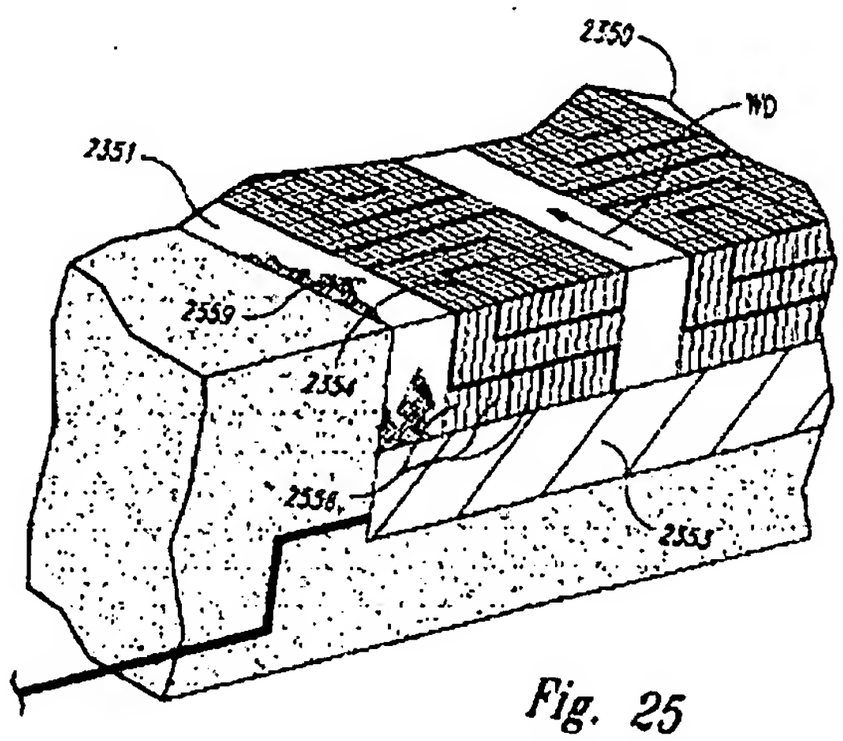

Fig. 25

Klawitter et al., teaches all the limitations of the claimed subject matter except for mentioning specifically a thermo generating element that comprises: a heater array comprising a conductive polymer coating bonded to a film base and a protective film

layer laminated to said film base, and wherein said conductive polymer coating comprises carbon flakes and a polymer.

However, a thermo generating element that comprises: a heater array comprising a conductive polymer coating bonded to a film base and a protective film layer laminated to said film base, and wherein said conductive polymer coating comprises carbon flakes and a polymer is considered conventional in the art as evidenced by the teachings of Wyatt et al.

The Wyatt et al. patent Shows in figures, 24A-D, a thermo generating element that comprises: a heater array (see Fig. 25) comprising a conductive polymer coating bonded to a film (col. 35, line 33-45) base and a protective film layer laminated to said film base, and wherein said conductive polymer coating comprises carbon flakes and a polymer.

Based on the above observations, for a person of ordinary skill in the art, modifying the method disclosed by Klawitter et al., with the above discussed enhancements would have been considered obvious because such modifications would have enhanced the diagnostic system by using a carbon-filled polymer heating element that is radiolucent. As a result, it will not obscure or otherwise impair x-ray images taken of a patient positioned on the heating pad.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John F. Ramirez whose telephone number is (571) 272-8685. The examiner can normally be reached on (Mon-Fri) 7:30 - 4:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian L. Casler can be reached on (571) 272-4956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JFR
10/31/06

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